

VZCZCXRO2734
PP RUEHBZ RUEH DU RUEHGI RUEHJO RUEHMR RUEHRN
DE RUEHKI #0816 1951135
ZNR UUUUU ZZH
P 141135Z JUL 07
FM AMEMBASSY KINSHASA
TO RUEHC/SECSTATE WASHDC PRIORITY 6528
INFO RUEHXR/RWANDA COLLECTIVE
RUCNSAD/SOUTHERN AF DEVELOPMENT COMMUNITY
RUEAIIA/CIA WASHDC
RHEFDIA/DIA WASHDC
RHMFISS/HQ USEUCOM VAIHINGEN GE
RUFOADA/JAC MOLESWORTH RAF MOLESWORTH UK

UNCLAS KINSHASA 000816

SIPDIS

SENSITIVE
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E.O. 12958: N/A
TAGS: [PHUM](#) [PGOV](#) [KDEM](#) [KJUS](#) [CG](#)
SUBJECT: NLANDU'S COURT BATTLE MAY NOT YET BE OVER

REF: KINSHASA 502 AND PREVIOUS

¶1. (U) Congolese lawyer and opposition figure Marie-Therese Nlandu, who was acquitted April 30 on charges of insurrection and weapons possession (reftel), could find herself back in court at the urging of prosecutor Homere Nkulu Katenda. The Kinshasa military appeals court filed an appeal June 20 against the Kinshasa military tribunal that found Nlandu and nine co-defendants not guilty. According to Kinshasa press reports of July 9, Colonel Madialuwa, the appeals court chief, said he filed the appeal himself because the original court's ruling was a "misjudgment."

¶2. (U) The issue for Madialuwa was a statement made by Kinshasa military tribunal chief justice Major Martin Mbokolo Ewawa. Madialuwa claimed Mbokolo had proposed a more "humanitarian" military justice system when he called in his judgment for a law defining the competence of military tribunals to judge civilians. Madialuwa also criticized Mbokolo's statement to Nlandu that he could not say she was not in the wrong, just that the case against her did not succeed in proving that she was. Madialuwa asked, "How can you acquit a person when you can't say she isn't guilty?"

¶3. (U) Mbokolo had offered both sides five days to appeal the April 30 verdict. Madialuwa, however, filed the government's appeal more than fifty days later. He argued that the military justice code does not specifically address appeals, so the common law code allowing three months for appeal must apply.

¶4. (U) According to news reports, Nlandu, who is now in Europe, will not respond to the appeal when official notification is issued. In an interview from abroad, she essentially accused President Kabila of bad faith. "This appeal of June 20, 2007 is outside the legal limit of five days required by the code of military justice. Can the Congo still portray itself as a state of law? I told President Kabila thank you, because he made clear he was not against my acquittal. That meant: no appeal, no new investigations, no second trial. Supreme Magistrate: What good is his word? Can he be trusted? As many times before, his promises only raise questions."

¶5. (SBU) Joseph Mukendi, lead attorney for Nlandu and the other defendants, told us July 12 that he considers the appeal both illegal and politically motivated, and underscored that the military justice code stipulates that appeals must be filed in five days. Mukendi said there has been no move to rearrest any of the defendants, nor an official notification of the appeal. He said he will argue against reopening the case when the matter comes before the military appeals court in two or three weeks. Nlandu will

not return, he said, as her health would be endangered should she be rearrested.

¶6. (SBU) Comment: Madialuwa's action represents a belated action by government hard-liners, a rear guard action by a disgruntled judge, or both. End comment.
MEECE